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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/586,314	08/08/2008	Namie Itoi	0445-0364PUS1	2570

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EXAMINER

PHILIPS, BRADLEY

ART UNIT	PAPER NUMBER
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4129

NOTIFICATION DATE	DELIVERY MODE
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05/13/2011

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary	Application No. 10/586,314	Applicant(s) ITOI ET AL.	
	Examiner BRADLEY H. PHILIPS	Art Unit 4129	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 April 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 6 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 July 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>07/14/2006, 10/16/2006, 06/27/2008, 07/20/2009</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Oath/Declaration

The oath/declaration has been reviewed by the examiner and is found to comply with the provisions of 37 CFR 1.63.

Election/Restrictions

1. Claim 6 withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected example, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 04/25/2011.

Priority

Acknowledgment is made of applicant's claim effective filing date of 07/14/2006.

This application claims the benefit of prior-filed application No. PCT/JP2005/000834 under 35 U.S.C. 120, 121, or 365(c) or under 35 U.S.C. 119(e). If the prior-filed application is an international application designating the United States of America, it must be entitled to a filing date in accordance with PCT Article 11. See 37 CFR 1.78(a)(1)(i). If the prior-filed application is a nonprovisional application, the prior-filed application must be entitled to a filing date as set forth in 37 CFR 1.53(b) or 1.53(d) and include the basic filing fee set forth in 37 CFR 1.16. See 37 CFR 1.78(a)(1)(ii). If the prior-filed application is a provisional application, the prior-filed application must be

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entitled to a filing date as set forth in 37 CFR 1.53(c) and the basic filing fee must be paid within the time period set forth in 37 CFR 1.53(g). See 37 CFR 1.78(a)(4).

This application is not entitled to the benefit of the prior-filed application because the prior-filed application was not-entitled to a priority date as it was not published in English.

Applicant is required to delete the reference to the prior-filed application.

2. Acknowledgment is made of applicant's claim for priority under 35 U.S.C. 119(a)-(d) based upon an application filed in 2004-017924 on 01/27/2004. A claim for priority under 35 U.S.C. 119(a)-(d) cannot be based on said application, since the United States application was filed more than twelve months thereafter.

Information Disclosure Statement

The Information Disclosure Statement(s) filed on 07/20/2009, 06/27/2008, 10/16/2006, 07/14/2006 have been reviewed by the examiner and are found to comply with the provisions of 37 CFR 1.97, 1.98, and MPEP § 609.

Drawings

The drawing(s) have been reviewed by the examiner and are found to comply with the provisions of 37 CFR 1.81 to 1.85.

Specification

3. The disclosure is objected to because of the following informalities: RH requires a complete definition.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. Claim 8 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant claims ranges “130% to 150%” and “100% to 130%” and must only claim one range.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-5, 7, 10 rejected under 35 U.S.C. 102(e) as being anticipated by Baker (US 20030135177 A1, hereinafter “Baker”).

Regarding claim 1, Baker discloses a an absorbent article (Abstract) fully capable of having extensibility as a whole [0079] and comprising an absorbent member fully

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capable of extending [0122] having a number of small absorbent clusters dispersed therein in three dimensions (Abstract,) the small absorbent clusters containing a superabsorbent polymer and fibers [Fig. 3; 0007.]

Regarding claim 2, Baker teaches an absorbent article as set forth above in claim 1, wherein the absorbent member is Stretchable [0084.]

Regarding claim 3, Baker teaches an absorbent article as set forth above according to claim 1, wherein the absorbent member comprises a web containing crimped fibers [0088,] and the small absorbent clusters are dispersed in the web [Fig. 3]

Regarding claim 4, Baker teaches the absorbent article according to claim 1 and set forth above, wherein the small clusters are each composed of a superabsorbent polymer particle and a number of fibers adhered to the particle [0007.]

Regarding claim 5, Baker teaches an absorbent article according to claim 4 as set forth above, wherein the small clusters are each composed of a superabsorbent polymer particle and a number of fibers. The patentability of a product does not depend on its method of production, and the limitation of mixing particles of the superabsorbent polymer and the fibers with water, drying the mixture, and grinding the dried mixture to size has not been given patentable weight.

Regarding claim 7, Baker teaches an absorbent article according to claim 1, wherein the small clusters have an average size of 0.2 to 5 mm [0100, 0101.]

Regarding claim 10, Baker teaches a stretchable [0084] absorbent member (Fig. 3) comprising a web containing crimped fiber [0088,] the web having a number of small

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absorbent clusters dispersed in the web in three dimensions (Fig. 3,) the absorbent cluster containing a superabsorbent polymer particle and fibers [Fig. 3; 0007.]

Claims 1, 7, 8, and 9 rejected under 35 U.S.C. 102(e) as being anticipated by TSUCHIYA (EP 1142696 A1, hereinafter "Tsuchiya.")

Regarding claim 1, Tsuchiya teaches an absorbent article (title) having extensibility as a whole (Col. 4, lines 6-8) and comprising an extensible absorbent member (col. 4, lines 6-8) having a number of small absorbent clusters dispersed therein in three dimensions (Fig. 7e, 15), the small absorbent clusters containing a superabsorbent polymer and fibers [Fig. 7, [0018]].

Regarding claim 7, Tsuchiya teaches an absorbent article according to claim 1, wherein the small clusters have an average size of 0.2 to 5 mm [0018.]

Regarding claim 8, Tsuchiya teaches a water-absorbent composite comprising polymer particles immobilized on a fibrous substrate [0018], having a number of small absorbent clusters dispersed therein in three dimensions (Fig. 7e, 15), not shown to be materially different from applicant's disclosed absorbent core. Because the absorbent article of Tsuchiya is not materially different from the absorbent article of the applicant, Tsuchiya encompasses an absorbent article according to claim 1 as set forth above, wherein the extensibility of the absorbent article is such that, when the absorbent article is 150% extended in its longitudinal direction, maintained in the extended state for 2 hours at 40.degree. C. and 80% RH, and released from the extended state, the

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lengths of the absorbent article measured after 20 seconds and after 5 minutes from the release are from 100% to 130%, respectively, of the initial length.

Regarding claim 9, Tsuchiya teaches a water-absorbent composite comprising polymer particles immobilized on a fibrous substrate [0018], having a number of small absorbent clusters dispersed therein in three dimensions (Fig. 7e, 15), not shown to be materially different from applicant's disclosed absorbent core. Because the absorbent article of Tsuchiya is not materially different from the absorbent article of the applicant, Tsuchiya encompasses an absorbent article having extensibility as set forth above and designed not to be less absorbent when 150% extended in its longitudinal direction than before being extended.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRADLEY H. PHILIPS whose telephone number is (571)270-5180. The examiner can normally be reached on Monday - Friday, approximately 8AM - 5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Sweet can be reached on (571)272-4761. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/BRADLEY H PHILIPS/
Examiner, Art Unit 4129

/Thomas J Sweet/
Supervisory Patent Examiner, Art
Unit 3779